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No. 93-241

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

RUTH JAFFE,
Petitioner,

v.

HARDY M. SNOW, JR. and
ACCREDITED SURETY & CASUALTY
COMPANY, INC.,
Respondents.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE INTERNATIONAL HUMAN RIGHTS LAW GROUP, LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC, AND CENTER FOR CONSTITUTIONAL RIGHTS IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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The International Human Rights Law Group (IHRLG), the Allard K. Lowenstein International Human Rights Clinic of the Yale Law School (LIHRC or Clinic), and the Center for Constitutional Rights (CCR or Center) request the Court for leave to file the attached brief amicus curiae supporting the Petition for Writ of Certiorari in this case. Below, the IHRLG filed an amicus brief in the Fifth District Court of Appeals of the State of Florida on behalf of Petitioner, then Plaintiff/Appellant.

INTEREST OF AMICI

The IHRLG is a non-profit legal organization founded in 1978 that provides legal assistance and information on international human rights law and has Category II consultative status with the United Nations Economic and Social Council. The IHRLG provides legal advice in lawsuits raising questions of international human rights and has participated as amicus before this Court in cases including Sale v. Haitian Centers Council, Inc., 113 S.Ct. 2549 (1993), Saudi Arabia v. Nelson, 113 S.Ct. 1471 (1993), and United States v. Alvarez-Machain, 112 S.Ct. 2188 (1992).

The Clinic was organized in 1991 at the Yale Law School as a faculty-supervised course under the auspices of the Allard K. Lowenstein International Human Rights Project, a student-run organization that works to educate in international human rights. The Clinic is acting as co-counsel for the plaintiffs in several ongoing lawsuits seeking damages for

violations of international human rights. See, e.g., Evans Paul, et al. v. Prosper Avril, No. 91-0399 (S.D. Fla. filed Feb. 28, 1991); Teresa Xuncax, et al. V. Hector Gramajo, No. 91-11564WD (D. Mass. filed June 6, 1991). During the past two terms, the Clinic was lead counsel before this Court in Sale v. Haitian Centers Council, Inc., 113 S.Ct. 3028 (1993) and Sale v. Haitian Centers Council, Inc., 113 S.Ct. 2549, and filed amicus briefs in Saudi Arabia v. Nelson, 113 S.Ct. 1471 and United States v. Alvarez-Machain, 112 S.Ct. 2188.

The CCR is a tax-exempt litigation firm devoted to enforcing the U.S. Bill of Rights and the International Bill of Rights in United States courts. CCR was a lead counsel in the landmark case, Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980) (Alien Tort Claims Act, 28 U.S.C. § 1350 (1988), grants federal courts jurisdiction to hear cases seeking compensation for acts of torture outside the United States). Since then, the Center has been co-counsel on

numerous cases seeking damages for violations of international human rights. The questions presented here regarding the enforceability of damages judgments for human rights violations are of great interest to the IHRLG, the Clinic, the Center and their clients.

REASONS FOR GRANTING LEAVE

Counsel for Respondents has refused to grant consent for amici to file the attached brief amicus curiae, and has refused to notify amici of the date of her receipt of the Petition for Writ of Certiorari, filed August 9, 1993. As an amicus below, the IHRLG received a copy of the Petition mailed from Los Angeles to Washington, D.C. on August 11, 1993. Estimating that Respondents' counsel in Florida received the Petition on or after August 11, 1993 as well, amici consider that this Motion and the accompanying brief are timely filed by September 10, 1993, 30 days from receipt on August 11.

In the accompanying brief, amici address important and relevant questions of Federal and

international law that will not otherwise be presented to the Court. The questions have not been presented in the Petition for Writ of Certiorari, and Respondent would have no reason to address such issues that weigh in favor of granting certiorari. The issues highlight the foreign affairs implications of this case and its significance for reciprocal enforcement of U.S. judgments. Because of amici's expertise with respect to such issues, amici respectfully request this Court for leave to file the accompanying brief.

Respectfully submitted,

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Amici Curiae, the International Human Rights Law Group [IHRLG], the Lowenstein International Human Rights Clinic, and Center for Constitutional Rights, respectfully urge this Court to issue a writ of certiorari to the District Court of Appeal of the State of Florida, Fifth District. For the following reasons, amici submit that this case presents substantial and significant questions of Federal

and international law.

Amici adopt and incorporate herein by reference the Statement of the Case set out in the Petition ("Pet."), at pp. 3 - 10.

INTEREST OF AMICI

The IHRLG is a non-profit legal organization founded in 1978 that provides legal assistance and information on international human rights law and has Category II consultative status with the United Nations Economic and Social Council. The IHRLG provides legal advice in lawsuits raising questions of international human rights and has participated as amicus before this Court in cases including Sale v. Haitian Centers Council, Inc., 113 S.Ct. 2549 (1993), Saudi Arabia v. Nelson, 113 S.Ct. 1471 (1993), and United States v. Alvarez-Machain, 112 S.Ct. 2188 (1992).

The Allard K. Lowenstein International Human Rights Clinic of the Yale Law School [Clinic] was organized in 1991 at the Yale Law School as a faculty-supervised course under the

auspices of the Allard K. Lowenstein International Human Rights Project, a student-run organization that seeks to educate and inspire law students, scholars, practicing attorneys, and policymakers in the defense of international human rights. The Clinic is currently acting as co-counsel for the plaintiffs in several ongoing lawsuits seeking damages for violations of international law and human rights. See, e.g., Evans Paul, et al. v. Prosper Avril, No. 91-0399 (S.D. Fla. filed Feb. 28, 1991) (suit seeking damages for torture, arbitrary detention, cruel, inhuman or degrading treatment against former dictator of Haiti); Teresa Xuncax, et al. V. Hector Gramajo, No. 91-11564WD (D. Mass. filed June 6, 1991) (suit seeking damages for summary execution, disappearance, torture, arbitrary detention, and cruel inhuman or degrading treatment against former defense minister of Guatemala). During the past two terms, the Clinic was lead counsel before this Court in Sale v. Haitian Centers

Council, Inc., 113 S.Ct. 3028 and Sale v. Haitian Centers Council, Inc., 113 S.Ct. 2549, and filed briefs amicus curiae in Saudi Arabia v. Nelson, 113 S.Ct. 1471 (1993), and United States v. Alvarez-Machain, 112 S.Ct. 2188 (1992). The important questions presented here regarding the enforceability of damages judgments for human rights violations is therefore of great interest to the Clinic and its clients.

The Center for Constitutional Rights [CCR or Center] is a tax-exempt litigation organization devoted to enforcing the U.S. Bill of Rights and the International Bill of Rights. The Center has a particular interest in enforcing the norms of international rights in United States courts. CCR was a lead counsel in the landmark case, Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980), which established that the Alien Tort Claims Act, 28 U.S.C. § 1350 (1988), grants federal courts jurisdiction to hear cases seeking compensation for acts of

torture that occurred outside the United States. Since the Filartiga decision, the Center has been co-counsel on numerous seeking damages for violations of international human rights, including the cases currently being brought by amicus Clinic. The Court's decision in this case is thus of great importance to the Center and its clients.

REASONS FOR GRANTING THE PETITION

I. AS PART OF THE LAW OF THE UNITED STATES, CUSTOMARY INTERNATIONAL LAW HIGHLIGHTS THE SIGNIFICANCE OF THE FEDERAL ISSUES RAISED IN THIS PETITION

As part of the law of the United States, international customary law provides binding rules that highlight the significance of the Federal issues raised in this petition.[1] As

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[1] Federal common law has long been held to include customary international law. See The Paquete Habana, 175 U.S. 677, 700 (1900); The Nereide, 13 U.S. (9 Cranch) 388, 423 (1815); Fernandez v. Wilkinson, 505 F. Supp. 787 (D. Kan. 1980), aff'd sub

argued below, the Canadian judgment for which Petitioner seeks enforcement arises from acts of Respondents that violate the customary international law norm of territorial sovereignty. The Florida courts' refusal to honor the judgment also breaches the duty that the United States owes Canada under international law to redress a Canadian national's injuries that occurred on U.S. territory. Finally, the decision for which Petitioner seeks review breaches the

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nom. Rodriguez-Fernandez v. Wilkinson, 654 F.2d 1382 (10th Cir. 1981). In 1900, this Court observed that the law of nations "is a part of our law, and must be ascertained and administered by [our] courts . . ." The Paquete Habana, 175 U.S. at 700. Indeed, international law "became a part of the common law of the United States upon the adoption of the Constitution." Filartiga v. Pena-Irala, 630 F.2d 876, 886 (2d Cir. 1980) (emphasis in original).

international norm requiring good faith dealing between treaty parties by condoning Respondent's illegal act, a condemnation that unnecessarily disrupts foreign affairs and violates the principle of federal supremacy.

II. THE BOUNTY HUNTERS VIOLATED THE TERRITORIAL SOVEREIGNTY OF CANADA AND HENCE INTERNATIONAL LAW IN KIDNAPPING SIDNEY JAFFE

A. The Canadian Court Was Correct in Awarding Petitioner a Remedy for Wrongs Done to Her by Respondents

The Florida court based its determination not to enforce Petitioner's Canadian judgment in large measure upon its condemnation of her husband as a fugitive from justice, a contemnor, and a wrongdoer who must be prevented from profiting by his wrong. This view, said the court, barred his wife's recovery, even though his forcible return from Canada by Respondents "was wrongful in Canada's eyes." Pet., at A-13.

Transborder kidnapping is wrongful, not only "in Canada's eyes," but also in international law and hence in the law of the United States. It cannot cavalierly be

dismissed with a wink and a nod. Moreover, the specifically Federal character of the wrong -- and the potential consequences for the Federal Government if such wrongs go unredressed -- mandate the intervention of this Court.

It should be noted at the outset that review of this case and decision on the merits in favor of Petitioners would not require overruling or narrowing of United States v. Alvarez-Machain, 112 S.Ct. 2188 (1992). The question in Alvarez was not the wrongfulness of international kidnapping. To the contrary, the Court conceded that it "may be correct that respondent's abduction was "shocking" . . . and that it may be in violation of general international law principles. Id. at 2196. In Alvarez, the much more limited question was whether the prohibition of such conduct was part -- implicitly or explicitly -- of a particular legal instrument, the U.S.- Mexico Extradition Treaty. This Court held that it was not, and thus that the "fact of respondent's forcible

abduction does not . . . prohibit his trial in a court in the United States for violations of the criminal laws of the United States." Id. at 2197.

Here, Petitioner does not seek to have Respondent's conduct measured against any particular international treaty. The measuring has already taken place. Ms. Jaffe's Ontario judgment incorporates an adjudication that she was wronged by the Respondent's conduct, and that those wrongs entitle her to a remedy in money damages. Nor is the question whether Jaffe's forcible abduction prohibited a U.S. criminal trial. Rather, the question is whether U.S. courts should give recognition to a duly entered Canadian judgment, granted in accordance with due process and Canadian law. Even were her husband's illegal conduct proved,[2]

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[2]/ While amici take no position on the merits of Mr. Jaffe's ongoing legal disputes with the State of Florida, one cannot help but notice numerous inaccuracies in the court

Petitioner should be entitled to damages for the injury done to her by Respondents' illegal acts.

By refusing to recognize and enforce the Canadian judgment, the Florida court inexplicably ignored this Court's express pronouncement that a person forcibly abducted from a foreign country by private citizens to stand trial in the United States may recover civil tort damages from his abductors. In Ker v. Illinois, 119 U.S. 436 (1886), this Court held that a U.S. citizen kidnapped in Peru by a Pinkerton agent could be tried in this country despite the fact that the abduction was illegal. The Court took pains, however, to emphasize that its holding did

> not leave the prisoner . . . without

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of appeals' decision. To cite but one example, the court describes Sidney Jaffe as a fugitive from justice for failing to appear in a Florida courtroom, when at the time Mr. Jaffe was testifying against his kidnappers in Canada.

> remedy for his unauthorized seizure [because he could sue the Pinkerton agent] in an action of trespass and false imprisonment, and the facts set out in the plea would without doubt sustain the action.

Id. at 444, see United States v. Matta-Ballesteros, 700 F.Supp. 528, 530 (N.D. Fla. 1988) (in Ker the Supreme Court "pointed out that the defendant could sue his abductor for damages").

Thus, while Ker is often cited for the proposition that criminal jurisdiction may be asserted over a defendant no matter how he or she is brought before the court, Ker itself also supports the right of Ms. Jaffe to enforce her Canadian judgment against Respondents. The Florida court clearly acted contrary to Ker when it refused to recognize and enforce that judgment.

B. The Forcible Abduction of a Person From Another Nation Constitutes a Tort in Violation of the Law of Nations

The illegality of Respondents' conduct in international law is established. That

illegality entails, as a matter of logic, illegality under United States law, since international law is part of the law of the United States. See supra at note 1.

The forcible abduction of Mr. Jaffe from Canada constituted a tort in violation of the law of nations. In addition, even though the kidnapping was perpetrated by private individuals, their conduct violated the "law of nations" because it (1) was contrary to standards, rules or customs affecting the relationship between states used by those states for dealings among themselves, and (2) infringed upon the sovereignty of a foreign nation.

The law of nations encompasses "standards by which nations regulate their dealings with another." Cohen v. Hartman, 634 F.2d 318, 319 (5th Cir. 1981). An act committed by one or more individuals may constitute a tort in violation of the law of nations if it (1) violates "'those standards, rules of customs (a) affecting the relationship between states or

between an individual and a foreign state, and (b) used by those states for their common good and/or dealings inter se,'" and (2) "impinges upon a nation's exercise of its sovereignty." Id. (citation omitted.)

In Forti v. Suarez-Mason, 672 F. Supp. 1531 (N.D. Cal. 1987), the district court held that a claim against an individual for arbitrary detention constituted a cause of action for tortious conduct in violation of the law of nations, and rejected as "unsupported" the defendant's contention that international law extends only to relations between sovereign states.[3]

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[3]/ Upon reconsideration, the court extended its ruling to hold that the tort of "causing disappearance" also violated the law of nations. Forti v. Suarez-Mason, 694 F.Supp. 707 (N.D. Cal. 1988).

It has long been recognized that international law may govern the conduct of private individuals. See Respublica v. De Longchamps, 1 Dall. 111, 115-6, 1 L.

Ed. 59 (1784) (by "threatening and menacing bodily harm and violence to . . . [the] Secretary to the Legation from France," the defendant -- a private individual -- violated "the Law of Nations"); The Flick Case, 6 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10 at 1192 (1952) ("[i]nternational law, as such binds every citizen just as does ordinary municipal law"); 1 Hyde's International Law § 11A at 33, 34 (2d rev'd ed. 1945) ("The commission of particular acts, regardless of the character of the actors, may be so detrimental to the welfare of the international society that its international law may clothe a State with the privilege of punishing the offender, or impose upon it the obligation to endeavor to do so. The offender may be a

Id. at 1540-42.

The bounty hunters' abduction of Mr. Jaffe, at Respondents' behest similarly qualifies as a tort in violation of the law of nations. The abduction contravened "standards, rules or customs affecting the relationship between states" and used by those states for dealings among themselves. Furthermore, the international nature of the kidnapping violated the sovereignty of Canada, to which Canada has objected strenuously and continuously.

The conclusion that the abduction of Mr. Jaffe by Respondents contravened "standards, rules or customs affecting the relationship between states" is borne out by a look at the rules used by those states for dealings among themselves. Courts in the United States have recognized that "international law does not

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private individual; and when he is subjected to the imposition of a penalty, he comes into close contact with the law of nations").

permit one nation forcibly to remove an individual from another." E.g., United States v. Verdugo-Urquidez, 939 F.2d 1341, 1352 (9th Cir. 1991), vacated, 112 S.Ct. 2986 (1992). In United States v. Toscanino, 500 F.2d. 267 (1974), the Second Circuit expressly acknowledged the "long-standing principle of international law that abductions by one state of persons located within the territory of another state violate the territorial sovereignty of the second state." 500 F.2d at 278 (emphasis added).

The bounty hunters' abduction of Mr. Jaffe from Canada unquestionably infringed upon the sovereign interest of Canada in protecting its citizens, and Canada has so noted in its objections. U.S. courts have had no difficulty in reaching this conclusion in cases involving the same facts as those in the case under petition. See Kear v. Hilton, 699 F.2d 181, 184 (4th Cir. 1983) (a U.S. bail bondsman's abduction of Mr. Jaffe, a Canadian citizen, from

Canada resulted in "the sovereignty of a foreign power [being] infringed"). The right of the victims of such a tort to compensation should be upheld.

III. THE REFUSAL OF THE FLORIDA COURTS TO ENFORCE PETITIONER'S CANADIAN JUDGMENT BREACHES A DUTY TO REMEDY THAT THE UNITED STATES OWES CANADA UNDER INTERNATIONAL LAW

The United States has an Extradition Treaty with Canada, Treaty on Extradition, Dec. 3, 1971, U.S.-Can., 27 U.S.T. 983, just as it has with Mexico, Treaty on Extradition, May 4, 1978, U.S.-Mex., 31 U.S.T. 5059. In Alvarez-Machain, this Court held that the United States may exercise criminal jurisdiction over a person brought into the United States by a means (e.g. kidnapping) not contemplated by the Treaty, even if that means was illegal when and where carried out. 112 S.Ct. 2188 (1992). That is, the irregularity of the method by which a defendant was brought before a court does not defeat the court's ability to try him.

Alvarez does not expressly address the question whether the abducted foreign national

might have a private right of action against his kidnappers. But its reference to Ker v. Illinois would seem to suggest that the kidnapped individual does have such a right. In Ker this Court rejected Ker's objection to jurisdiction in part because "[t]he party himself could . . . sue . . . in an action of trespass and false imprisonment . . . " 119 U.S. at 425.[4]

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[4] Even if a public policy argument might be constructed in favor of denying the right to sue to an abductee ultimately convicted of criminal behavior in a U.S. jurisdiction, that would not apply to Mr. Jaffe. Although the court below suggests that Jaffe's acquittal rested on some kind of technicality, Pet. at A-4, the fact remains that the same court overturned Jaffe's original conviction, thus vindicating his wife's right to sue. In fact, no court in Florida or elsewhere has found Mr. Jaffe guilty of the land fraud

Canada has a right in international law to the cooperation of the United States in enforcing the Treaty, including enforcement in damages for violations by private parties. This right is trampled by the judgment review of which is now sought.

The State of Florida is obligated to provide victims of breaches of international human rights law the ability to obtain civil tort damages from those private U.S. citizens responsible for the violation. As reflected in § 701 (b) of the Restatement (Third) of Foreign Relations Law of the United States, governmental

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charges first levelled against him, but for a trial judgment later reversed on appeal. In such a case, the suggestion that a judgment in tort be enforced by his wife against the kidnappers who brought him into the jurisdiction, where he was incarcerated for months before his conviction was set aside, is anything but offensive.

entities are required to "respect the human rights of persons" which nations "generally are bound to respect as a matter of customary international law." See Restatement (Third) of Foreign Relations Law of the United States § 701 cmt. e. (1986) ("[t]he United States is bound by the international customary law of human rights").

The Restatement also provides:

> A state is also responsible if it fails to provide an alien remedies for injury to person or property, whether inflicted by the state or by private persons in circumstances in which a remedy would be provided by the major legal systems of the world.

Restatement (Third) of Foreign Relations Law of the United States § 711 cmt. e. (1986) (emphasis added); see also Restatement (Third) of Foreign Relations Law of the United States § 711 reporters' note 1 (1986) ("[i]t is wrong under international law for a state to deny a foreign national access to domestic courts"). Accordingly, the State of Florida was obligated to permit Ms. Jaffe to enforce her judgment

against Respondents for the international kidnapping of her husband.

IV. THE FLORIDA DECISION BREACHES THE INTERNATIONAL CUSTOM OF GOOD FAITH DEALING BETWEEN TREATY PARTIES BY CONDONING RESPONDENTS' ILLEGAL ACTS

The Florida courts' refusal to honor the Petitioner's Canadian judgment breaches the international norm requiring good faith dealing between treaty parties by condoning respondents' illegal acts. As a matter of customary international law, which is part of the law of the United States, see supra at note 1, states are obligated to refrain from committing acts calculated to defeat the object and purpose of treaties to which they are party. It is a cardinal principle of customary international law that "a treaty in force is binding upon the parties and must be performed by them in good faith." I. Brownlie, Principles of Public International Law 616 (4th ed. 1990). This rule of pacta sunt servanda has been a cornerstone of international law since its earliest origin and "has acquired great importance for the stability

and development of international relations as instruments of peace and as mechanisms for settlement of disputes or relaxation of tensions." P.K. Menon, The Law of Treaties Between States and International Organization 56 (1992).

The principle at stake here is much the same as its domestic contract law counterpart. One commentator has stated:

> Good faith in contractual relations thus implies the observance by the parties of a certain standard of fair dealing, sincerity, honesty, loyalty, in short, of morality throughout their dealings...International law applies this standard in treaty relations between States...much as municipal law in contractual relations between individuals.

B. Cheng, General Principles of Law as Applied by International Courts and Tribunals 119 (1953), reprinted in International Law and World Order 792 (B.H. Weston ed., 1980).

Conventional agreements have recognized the force of the international norm mandating good faith conduct among treaty parties. The Vienna

Convention on the Law of Treaties[5] notes the pacta sunt servanda rule in its Preamble and defines its contours in two articles. Article 18 states that "[a] State is obliged to refrain from acts which would defeat the object and purpose of a treaty;" article 26 provides that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith."

In like manner, the International Court of Justice has consistently recognized the impact of the good faith rule governing treaty parties'

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[5] The Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980). Although the United States is not a party to the Vienna Convention, the treaty, ratified by 74 States, reflects an international consensus. The Vienna Convention is primarily a codification of customary norms of international law.

conduct. In the Nicaragua case, the World Court relied on the principle that a State has a legal obligation "not to impede the due performance of any treaties entered into by them." Military and Paramilitary Activities (Nicaragua v. U.S.), 1986 I.C.J. 14, 135. The Court reasoned that the United States violated the customary rule by committing acts that were calculated to deprive the Treaty of Friendship, Commerce and Navigation between the United States and the government of Nicaragua of its object and purpose. Id. at 148. See also Nuclear Test Cases (Australia v. France), 1974 I.C.J. 253, 268; and Nuclear Test Cases (New Zealand v. France), 1974 I.C.J. 457, 473 (good faith requires adherence to unilateral commitment not to test).

The Restatement of Foreign Relations Law of the United States reiterates the principle, stating that "[e]very international agreement in force is binding upon the parties to it and must be performed by them in good faith."

Restatement (Third) of Foreign Relations Law of the United States § 321 (1986). Section 325 of the Restatement mandates that "[a]n international agreement is to be interpreted in good faith . . ." Id. § 325.

In keeping with the Restatement, U.S. courts have recognized the customary rule of pacta sunt servanda as a framework for interpreting the treaty obligations of the United States. In United States v. Rauscher, 119 U.S. 407 (1886), the Supreme Court emphasized the good faith with which extradition treaties are to be read. The Rauscher Court held that a prisoner could not be charged for a crime never presented to the extradition judge under the Webster-Ashburton Treaty, stating that to do otherwise would violate the "manifest scope and object of the treaty." Id. at 422. See also Tucker v. Alexandroff, U.S. 424, 437 (1901) (the convention under review "should be interpreted in a spirit of uberrima fides, and in a manner to carry out its manifest purpose.")

Although it has been held that an extradition treaty is not violated by conduct that is solely of private individuals, this rule does not apply where a government sponsors or condones the actions. In Jaffe v. Smith, 825 F.2d 304 (1987), prior to the Florida court of appeals' ruling, the Eleventh Circuit held that Mr. Jaffe's abduction from Canada would have constituted a violation of the U.S.-Canada Extradition Treaty if governmental actors were involved, that is, if the government conducted or condoned his removal by means other than those outlined in the Treaty. Id. at 308 (emphasis added). "Condonation" is defined as "an implied pardon of an offense by treating the offender as if it had not been committed." Webster's Ninth Collegiate Dictionary 274 (1988). By refusing to recognize and enforce the Canadian judgement against the appellees, the Florida court clearly "condoned"

Respondents' role in the abduction of Mr. Jaffe.[6]

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[6]/ Furthermore, that an extradition treaty does not give private citizens a private cause of action for violation does not mean U.S. citizens are free to flout its prescriptions. Article VI, Clause 2, of the U.S. Constitution states that "all Treaties . . . shall be the Supreme Law of the Land." U.S. citizens are therefore bound by a treaty's proscriptions. See, e.g., Volkswagenwerk-Aktiengesellschaft v. Schlunk, 486 U.S. 694 (1988) (the Hague Service Convention imposes on private U.S. citizen obligations for the service of process abroad); In re Aircrash in Bali, Indonesia, 684 F.2d 1301 (9th Cir. 1982) (the Warsaw Convention -- a treaty which limits the amount of liability of air carriers for accident or loss -- applies to private individuals seeking damages caused by a plane crash); cf. Hilton v.

Consequently, the Florida decision has participated in a violation of the extradition treaty by effectively permitting circumvention of the treaty by private parties. Such action on the part of a State court should not and can not be countenanced in our Federal system of Government. The fact that this international law violation is being committed by a state of the union is particularly egregious because it violates the principle of federal supremacy. See U.S. Const. art. VI. The violation of international law by the state courts unnecessarily disrupts foreign affairs and the

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Guyot, 159 U.S.113 (1895) (treaties provide a "most certain guide" for the application of international law to questions "concerning the rights of persons within the territory and dominion of one nation, by reason of acts, private or public, done within the dominions of another nation") (159 U.S. at 163, emphasis added).

comity owed to foreign nations. This Court held in Zschernig v. Miller, 389 U.S. 429 (1968), that this "kind of state involvement in foreign affairs and international relations [are] matters which the Constitution entrusts solely to the Federal Government. [State] regulations must give way if they impair the effective exercise of the Nation's foreign policy. Where those laws conflict with a treaty, they must bow to the superior Federal policy. Yet even in the absence of a treaty, a state's policy may disturb foreign relations." This court should not, through denial of certiorari, effectively condone such a state intrusion into foreign affairs, especially when it has not heard from the US Government on this question.

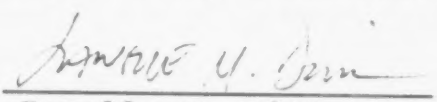
V. CONCLUSION

For all of the foregoing reasons, amici curiae respectfully submit that the writ of certiorari should issue. Amici will thereafter seek leave to expand upon these and related arguments in urging this Court to reverse and

remand the judgement under review.

Given the foreign affairs implications of the issues presented in this case, its significance for reciprocal enforcement of U.S. judgments, and the high level of interest shown by several successive administrations of the Executive Branch of the U.S. Government (see, e.g., Pet. at 3-7, A-48 - A-51) and the Canadian Executive and Parliament, the Court may wish to call for the views of the Solicitor General before final action on the petition.

Respectfully submitted,



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